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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/890,186	10/09/2001	David Reginald Adams	040283-0192	7541

7590 05/16/2003

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EXAMINER
BALASUBRAMANIAN, VENKATARAMAN

ART UNIT	PAPER NUMBER
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1624

DATE MAILED: 05/16/2003

115

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/890,186

Applicant(s)

ADAMS ET AL.

Examiner

Venkataraman  
Balasubramanian

Art Unit

1624

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 24 April 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☒ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: \_\_\_\_\_.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☒ Other: See attached

### ADVISORY ACTION

The amendment filed 4/24/2003 under 37 CFR 1.116 in reply to the final rejection has been considered but is not deemed to place the application in condition for allowance and will not be entered for the following reasons.

1. First of all, the exhibit submitted under 37 CFR 1.132 is not entered and considered as it does not meet the timeliness criteria set forth MPEP 716.01, which states "Evidence traversing rejections must be timely or seasonably filed to be entered and entitled to consideration. In re Rothermel, 276 F.2d 393, 125 USPQ 328 (CCPA 1960). In the instant case the declaration is not timely as it is filed after final rejection and does not meet the requirement of 37 CFR 1.116(b). Hence, claims 1-8, 12-14, 16 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mokrosz et al., Med. Chem. Res. 3: 240-248, 1993 for reasons of record in the previous office action remains. Applicants should note that this rejection was made in paper # 11 and then in paper # 13.
2. Claims 1-8, 12-14, and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Jonas et al. US 3,853,878 for reasons of record. Applicants' argument to overcome this rejection is not persuasive.

Applicants have now changed the scope of the claims to pharmaceutical composition, which would necessitate new search, new rejections and reopening of the application for examination. Since the previous office action is Final action, the prosecution remains closed.

Hence the rejection is maintained.

**Conclusion**

Any inquiry concerning this communication from the examiner should be addressed to Venkataraman Balasubramanian (Bala) whose telephone number is (703) 305-1674. The examiner can normally be reached on Monday through Thursday from 8.00 AM to 6.00 PM. The Supervisory Patent Examiner (SPE) of the art unit 1624 is Mukund Shah whose telephone number is (703) 308-4716.

The fax phone number for the organization where this application or proceeding is assigned (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

*VB*

V. Balasubramanian

5/13/2003

*Mukund J. Shah*

MUKUND J. SHAH

SUPERVISORY PATENT EXAMINER

Art Unit 1624